IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2381 of 2000

with

FIRST APPEAL No 2384 of 2000
with
CIVIL APPLICATION NO. 9476 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

SURYAKANTABEN D ACHARYA

Appearance:

MR PRANAV G DESAI for Petitioner

MR SANDEEP N BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Service of which is waived by learned advocate Mr. Bhatt on behalf of respondent Nos. 1 to 5. Leave to delete respondent No. 6 driver of the bus. In view of the peculiar facts and special circumstances and the urgency in the matters, upon joint request, we have agreed to hear and dispose of the matter on merits since record and proceedings are also available with us.

2. In course of hearing of these appeals, our attention was drawn that the original claimants have also preferred appeal No. First Appeal Stamp No. 1501 of 2000 on behalf of the original claimants in First Appeal for enhancement of compensation by learned advocate Mr. Bhatt. Therefore, upon report from the Registry, the said appeal is also ready and as no office objections are there, we called for hearing of the appeal. Therefore, learned advocate for the appellant in the First Appeal Mr. Desai appeared for opponents. In the circumstances, First Appeal Stamp No. 1501 of 2000 is also tagged together with the First Appeal and both of them are, jointly, heard and since they arise from one and common judgement and award and also accident, upon request they are being disposed of by this common judgement by us.

3. Obviously, both the appeals are filed invoking aids of the provisions of Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as `the new Act') and both the appellants have challenged the amount of compensation. In First Appeal like that F.A. No. 2381 of 2000 at the instance of the Gujarat State Road Transport Corporation, original opponent in MACP No. 206 of 1994 the appellant has challenged the quantum and restricted the challenge to the extent of Rs. 4 lakhs whereas in the second appeal at the instance of the original claimants, they have preferred appeal for enhancement of the amount of compensation. However, in appeal it is restricted to Rs. 1,50,000/-. So the gist of both appeals as arising out of the amount of compensation claimed in M.A.C.P. No. 206 of 1994 filed by the original claimants before the Motor Accident Claims Tribunal, Rajkot, claiming an amount of Rs. 9,28,950/for the unfortunate and untimely, death of the main bread-winner of the family, a retired Judicial Officer, one D.T. Acharya, whose life was cut short, at the cruel hands of the providence in a tragic road mishap. The claimants are heirs and legal representatives

including widow of the deceased Mr. D.T. Acharya.

4. The entire claim is founded upon the tortious act committed by the driver of the S.T. bus bearing GRZ 6700 belonging to the appellant in First Appeal original opponent. It has been contended that the driver of the said S.T. bus was responsible for causing unfortunate road accident which occurred on 8.1.1994 near Panchnath Mahadev Temple in the area of Harihar Chowk at Rajkot, the driver of the S.T. bus who was in charge of the bus came with excessive speed, driving in a rash and negligent manner and dashed against the deceased just infront of footpath when the deceased was walking without knowing that the invitation of death was in the pocket of the driver. As a result of injuries, the deceased sustained serious injuries on various parts of the body in general and on abdomen exterior and interior of the stomach area. The deceased was, violently, knocked down. As a result of which he fell on the tar road and sustained grievous injuries. He came to be shifted to the Government hospital for treatment as ill-luck could have been he breathed his last on account of serious injuries, in course of the treatment in the hospital on 14th day of the happening of the accident. Since the claimants were the dependants and the deceased was the only breadwinner in the family, there came a great tragedy on the family. The claimants, therefore, filed the aforesaid claim petition for compensation invoking the provisions of Section 166 of the new Act for Rs. 9,28,950/-.

5. The S.T party original opponent Nos. 1 and 2, the driver and the S.T. Corporation jointly appeared and resisted the claim petition by filing composite written submissions at Exh. 14, inter alia, contending that there was no tortious act or rashness or negligence on the part of the driver of the S.T. bus involved in the accident and therefore, they came with the contention that the claimants are not entitled to compensation.

6. Upon assessment and analysis of the evidence led by the parties and relied on by the Tribunal, the impugned judgement came to be recorded on 8.12.1999 whereby the original claimants came to be awarded consolidated sum of Rs. 6,01,300/- by way of compensation under different recognised heads with interest at the rate of 12% against the claim of Rs. 9,28,950/- holding that the driver of the S.T. bus involved in the accident was fully accountable for the blame in causing the accident resulting into death, from the date of application till payment. The break up of the sum of Rs. 6,01,300/- is as follows:-

Rs. 4,80,000/- loss of income
Rs. 17,200/- medical expenses
Rs. 50,000/- pain shock and sufferings
Rs. 35,000/- attendant charges
Rs. 2,100/- transportation charges
Rs. 7,000/- special diet
Rs. 10,000/- conventional amount

Rs. 6,01,300/-
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7. Thus, the Tribunal finding that the accident was the outcome of the rashness and negligence on the part of the driver of the offending S.T. Bus awarded the aforesaid amount to the claimants which is challenged by both the parties by filing two appeals as stated hereinbefore.

8. In course of submissions upon merits for final hearing the learned advocate Mr. Desai appeared for S.T. Bus, repeatedly and vehemently, contended that the Tribunal has made assessment on a very high side and therefore, the amount of Rs. 4 lakhs is required to be deducted from amount of compensation awarded by the Tribunal. In support of his contention, he has taken us through necessary, relevant and material document and viva voce evidence. As against that, the learned advocate appearing for the claimants' side Mr. Bhatt has, in support of the second appeal in which enhancement of amount to the extent of Rs. 1,50,000/-, also, forcefully, submitted that the impugned judgement and award is, grossly, inadequate in the light of the facts and circumstances of the case meaning the status, age, pensionary benefits, prospective earnings which the deceased could have earned had his life not been cut short at the cruel hands of the providence. He has, therefore, contended that the amount of Rs. 1,50,000/- claimed in the second appeal by way of additional compensation would meet with the requirement of amount of compensation being just and reasonable in the circumstances of the case. It is, therefore, very clear for us the quantification of damages aspect is at large open.

9. Before we examine the merits of the cross appeals and counter and rival submissions raised before us, it would be expedient to examine at this juncture the approach and evaluation of the evidence on this point made by the Tribunal while granting global sum of Rs.

6,01,300/-. We have, dispassionately, examined the impugned judgement and award. Relevant discussions in the impugned judgement in so far as quantum damages aspect is concerned, are in paragraph Nos. 9 to 15. The break up of the amount awarded is also highlighted in penultimate para of the impugned order which we have hereinabove placed in focus.

10. After having given our anxious consideration to the observations and the evaluation of the evidence made by the Tribunal on the question of quantification of damages, we have no hesitation in finding that the amount of compensation to the extent of Rs. 6,01,300/- with interest at the rate of 12% per annum awarded by the Tribunal is not only on the conservative side but in the facts and circumstances is very much on the lower side. The Tribunal has considered the amount of compensation under seven different heads. In order to justify the amount of compensation granted under each head, the relevant and necessary narration of the evidence is noticed by us. It would be again expedient to highlight the following material aspects which have important bearing on the determination of the amount of compensation in a death case arising out of a road accident.

(i) The widow of the deceased Suryakantaben D. Acharya is examined at Exh. 30 and from her evidence it becomes evident that the deceased had no disease. He was hale and hearty. He was at times attending temple of god and temple of justice on foot.

(ii) Father of the deceased lived for a long till the age of 83 whereas the mother of the deceased lived longer than father and she died at the age of 85 years. It goes to show that the life span of the deceased family is higher and above the normal which is an important criteria in determining the number of multipliers before ascertaining the loss of dependency value to the common family fund and the original claimants. It is settled proposition of law that in a case wherein family average life span is higher than the normal life the Tribunal is obliged to consider higher and longer life span in an individual given case while selecting or determining the number of multipliers.

(iii) The deceased came from a family of law and justice. He was a retired District and Sessions

Judge. After retirement he accepted the office of Labour Court Judge at Rajkot being close to his home town Limbdi.

(iv) The deceased was aged about 62 years at the time of the unfortunate accident. It is very tragic that he could not even complete the full tenure as a Labour Court Judge.

(v) According to the evidence on record, the deceased upon completion of Labour Court Judge, intended to join legal practice in this court since his brother advocate V.T. Acharya was practising. Unfortunately, his aspiration to join the Bar in High Court and start practice turned out to be an eye-wash.

(vi) It is a matter of common understanding which it not controvertible that, ordinarily, retired judicial officers are re-employed or given some assignment. Even in this High Court to the best of our information, not less than 20 to 25 retired judicial officers are practising and reportedly, they have good practice. Therefore, the dream cherished by the deceased to be fortunate enough to join this Bar in the High Court after completion of the Labour Court Judge tenure which was to expire within 18 months have some reasonable nexus and basis.

11. A judicial notice of fact can, always, be taken by us that for the clearance of backlog which is astronomical, if impracticable, various alternative Disputes Forums have started functioning and many more are contemplated. It is in this context not only there is a dearth of retired judicial officers but there is poignant birth of good reputed judicial officers having high order of integrity to which class the deceased belonged. Despite this stark, hard and evident reality the Tribunal while making assessment under the head of loss of future earnings, has awarded a sum of Rs. 4,80,000/- which, in our opinion, is, undoubtedly, on a very lower side.

12. It is in this context, let us see the evaluation of the evidence made by the Tribunal. The deceased who had retired as District and Sessions Judge, had joined the office of Principal Labour Judge at Rajkot on re-employment basis and his monthly salary was Rs. 7,850/- about which there is no controversy. The

deceased could have continued on the same post upto the age of 65 years for which there is no dispute and during that time, there, obviously, would have been revision upwardly in the salary, allowance and other facilities and perks. It may not, also, be disputed that he could have worked as a consultant and also, as a legal practitioner and would have earned, reasonably, a good amount in the initial years of his practice after retirement. He could have, also, worked as an arbitrator or umpire in resolving the disputes, amicably.

13. Notwithstanding that the Tribunal even while taking into consideration the prospective earnings of the deceased, has considered and determined an amount of Rs. 12,000/- which is deducted by 1/3rd and net contribution to the common family fund has been assessed at Rs. 8,000/- per month. Obviously, therefore, the annual loss of dependency would work out to Rs. 96,000/- (Rs. 8,000/x 12). The Tribunal has taken 5 multipliers which ordinary and usual case of such nature could not be said to be unjust and unreasonable. Non the less the special circumstances obtainable in the present case, noticed from the evidence, the deceased would have enjoyed and lived for longer than the average life span in our country, in view of the fact that the parents lived for more than 82 years, it is in this context, 5 multiplier adopted by the Tribunal is required to be revised upwardly. The view which we are inclined to take at this juncture is very much reinforced by the decisions. It is in this context factually and legally the Tribunal ought to have adopted the minimum 6 multiplier in the present case. Of course, it is also a common belief amongst the professional and judicial fraternity that an average life span a judge as a class is itself longer and higher than that average life span in India whereas in the case of deceased still there was a higher life span since the parents of the deceased were in nineties. Even while taking conservative view in the matter 6 multiples ought to be adopted. In other words, one more multiple is required to be taken for reasonable and just amount of compensation.

14. In view of the aforesaid discussion, the annual loss of dependency which is assessed by the Tribunal at Rs. 96,000/- is, now, required to be multiplied by 6 multiplier. Therefore, it would work out to Rs. 96,000 x 6 = Rs. 5,76,000/- under the head of value of the dependency loss incurred to the claimants on account of, untimely, demise of the bread-winner of the family. Therefore, under this head instead of Rs. 4,80,000/-, amount awarded, shall stand modified to Rs. 5,76,000/-.

In so far as assessment of compensation under the head of medical expenses is concerned, the Tribunal has given Rs. 17,200/- in the light of the evidence. This could be raised to little higher but the discretion exercised by the Tribunal is not required to be disturbed for addition of few hundreds. Therefore, that amount shall remain unchanged.

15. Under the head of pain, shock, and sufferings, undergone by the deceased during the extensive treatment, various surgical operations, blood transfusion, shifting from one hospital to another hospital, during the spell of 14 days on account of serious injuries on various parts of the body and, particularly, head and abdomen injuries which were gross injuries must have caused tremendous amount of pain, which could not have a less than excruciating pain, though little more amount could be awarded depending upon the assessment and evaluation but we deem it not necessary since the amount of Rs. 50,000/- is awarded under this head.

16. The award of Rs. 2,100/- towards transport charges and Rs. 7000/- under the head of special diet awarded by the Tribunal are not required to be disturbed in the light of the facts of the case. However, amount of Rs. 10,000/- under the head of conventional amount for loss of expectation of life is, in our opinion, on a lower side. It is a matter of common knowledge that the conventional amount for loss of expectation of life is required to be revised, periodically, in tune of the rise in price and high rate of inflation which is very common in our economy. Therefore, this amount of Rs. 10,000/- awarded by the Tribunal is required to be enhanced to Rs. 20,000/-.

17. Under the head of attendants charges the Tribunal has awarded a sum of Rs. 35,000/-. It is true that the treatment was extensive for serious injuries and injured when counting minutes, no family member would meet an opportunity of rather than services. It is also clear from the evidence that one after the other two to three family members round the clock attended the deceased in course of the treatment. Obviously, the family members would not charge from a close relative and that too in such a situation. However, it is settled proposition of law that the members of the family who have to attend the injured during the course of treatment are, undoubtedly, rendering gratuitous services and because of natural love and affection they may not claim any monetary compensation or charges but that does not mean tortfeasor should be allowed to enjoy that benefit. It is a well

established doctrine in realm of the law talked that the gratuitous services rendered even by the spouse are required to be capitalised and recovered from the tortfeasors. However, bearing in mind the facts and circumstances, amount of Rs. 35,000/- awarded by the Tribunal under the head of attendant charges appears to be on a higher side. In absence of any specific evidence as to from which part of the area or the State they had to attend the deceased during the course of treatment, in the present case, amount of Rs. 35,000/- is required to be reduced by Rs. 20,000/- and therefore, in our opinion, an amount of Rs. 15,000/- under this head would be just and reasonable.

18. After having taken into consideration the entire tetimonial collection, documentary evidence, relevant proposition of law, material principle of Law of Tort, the peculiar facts about the age and avocation, longer life span professed in the family of the deceased, we are of the opinion that the claimants are entitled to a sum of Rs. 6,87,305/-, the break up of which is as follows:-

Rs. 5,76,000/- under the head loss of income
Rs. 17,200/- medical expenses
Rs. 50,000/- pain shock and sufferings
Rs. 15,000/- attendant charges
Rs. 2,100/- transportation charges
Rs. 7,000/- special diet
Rs. 20,000/- conventional amount

Rs. 6,87,300/-
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In other words, the claimants are entitled to additional amount of Rs. 86,000/- with interest at the rate of 12% per annum from the date of application till the date of payment

19. In the result, both parties' appeals succeed. Therefore, the appeals are partly allowed. The impugned judgement and award shall stand modified to that extent. Since both parties are successful parties, we leave the parties to bear their own costs. Office is directed to send back, immediately, record and proceedings which we had called for the purpose of examining the merits of both the appeals.

20. Before parting, we may state that the S.T. party is directed to deposit the full amount due and payable under our order with interest within a period of two months. The amount of Rs. 25,000/- deposited along with

the First Appeal by the S.T. party before this court shall be transmitted, immediately, to the Tribunal concerned for being disbursed. The amount that may be deposited before the Tribunal shall be disbursed and invested in terms of the directions contained in the impugned judgement and award.

In the result, the appeals are partly allowed.

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